

**Decision Memo – USDA Forest Service  
Diamond Tail Ranch Company, LLC  
Agricultural Irrigation and Livestock Watering System Easement for  
Nellie Ditch  
Under the Colorado Ditch Bill Act of 1986**

**Arapaho and Roosevelt National Forests & Pawnee National Grassland  
Canyon Lakes Ranger District  
Larimer County, Colorado**

**I. DECISION**

**A. Description of Decision**

It is my decision to approve the conditioning of an Agricultural Irrigation and Livestock Watering Easement under the Colorado Ditch Bill Act of 1986, being issued to Diamond Tail Ranch Company, LLC for the purpose of operating and maintaining a water conveyance system known as the Nellie Ditch. Conditions will be incorporated into the Easement by way of an Operation and Maintenance Plan and optional provisions. The Nellie Ditch is located in the NW1/4, Section 1, T.10 North, R.77 West, 6<sup>th</sup> Principal Meridian, Larimer County, Colorado. (See Exhibit B).

Under the terms of the Act of 1986, this Easement will be granted without fees.

The Nellie Ditch is operated by the Diamond Tail Ranch Company, LLC for agricultural and livestock irrigation on their ranch. The ditch crosses National Forest System land for 5,414.33 feet (1.02 miles) with a 20-foot wide right-of-way, 10 feet either side of the centerline. The ditch is located in the Laramie River basin, within the Rawah Wilderness Area. Water is diverted from McGuire Creek. The water right associated with the Nellie Ditch is 15.3 cubic foot/second. The water rights were decreed on September 10, 1903.

**B. Purpose of Decision**

While granting of such Easements is non-discretionary and, therefore, not a Federal action subject to analysis or review (FSM 2729.16f), analysis was conducted for this use to determine if there was a need for additional conditioning of the Easement for operation and maintenance activities, and for the protection of Threatened, Endangered, or Sensitive (TES) Species. The purpose of this decision is to document any environmental concerns associated with the operation and maintenance of the ditch, and the potential affect on TES Species, and to document the need for any additional conditioning of the Easement necessary to protect the environment from degradation due to continued operation of the water conveyance system.

## II. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION

Decisions may be categorically excluded from documentation in an Environmental Impact Statement or Environmental Assessment when they are within one of the categories identified by the U.S. Department of Agriculture in 7 CFR part 1b.3 or one of the categories identified by the Chief of the Forest Service in Forest Service Handbook (FSH) 1909.15 sections 31.1b or 31.2, and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative environmental effect. Supporting documents for this project will be retained in a project file on the Canyon Lakes Ranger District, in Fort Collins, Colorado.

### A. Category of Exclusion

The project is within the category of exclusion in FSH 1909.15 Category 31.2 (3): Approval, modification or continuation of minor special uses of National Forest System (NFS) lands that require less than five contiguous acres. The area covered by the water conveyance system right-of-way is approximately 2.49 acres.

### B. Relationship to Extraordinary Circumstances

There are no conditions that would constitute a significant effect on an extraordinary circumstance related to the proposed authorization. This conclusion is based on evaluation of the following items:

*1. Federally listed Threatened, Endangered, Proposed and Forest Service Sensitive Species or their Critical Habitat (Endangered Species Act: Section 7.)* – A Wildlife Biological Evaluation for all Forest Service sensitive was completed on September 11, 2007. The BE determined the project will have no impacts to any Forest Service sensitive species or their habitat.

A separate Biological Assessment (BA) dated July 24, 2007 was prepared by the Forest to assess the effects to federally-listed wildlife species and submitted to the U.S. Fish and Wildlife Service (USFWS) for concurrence. The determination in the BA was “may affect, likely to adversely affect” for the endangered whooping crane, interior least tern, pallid sturgeon, the threatened northern Great Plains population of the piping plover, and the western prairie fringed orchid, and for designated whooping crane critical habitat in Nebraska. The BA determined a “not likely to adversely affect” for the endangered American burying beetle, the Prebles meadow jumping mouse, Canada lynx and “no effect” for the endangered Eskimo curlew. The BA also determined a “no adverse modification” of Preble’s meadow jumping mouse critical habitat. The BA determined a “likely to adversely affect” for the bald eagle, however, the Biological Opinion from the USFWS dated September 1, 2007, stated the bald eagle was removed from protection under the Endangered Species Act on August 8, 2007.

The Biological Opinion stated the proposed action is not likely to jeopardize the continued existence of the above listed species and is also not likely to destroy or adversely modify designated critical habitat for the whooping crane if certain terms and conditions were met. To comply with these terms and conditions, Diamond Tail Ranch Company, LLC has become a member of the South Platte Water Related Activities Program, Inc. (SPWRAP) which serves as the vehicle by which Colorado water users may participate in the Platte River Recovery Implementation Program. A membership with SPWRAP is required for water users who wish to rely on the Program for Endangered Species Act compliance relative to these Platte target species.

A Biological Report for Plants was completed on June 16, 2007. The findings of the report state there were no occurrences of federally threatened, endangered, proposed or sensitive plant species in the project area. Suitable habitat for several Region 2 Sensitive species was located. The summary of effects determination for Region 2 Sensitive plant species is, "may adversely impact individuals, but not likely to result in a loss of viability in the planning area, nor cause a trend to federal listing." No additional conditioning of the Easement is required for protection of any plant species, although recommendations were made to have a botanist survey prior to any improvements to the ditch to help reduce any potential impacts to sensitive and/or rare plants.

2. *Floodplains and Wetlands* – A Water, Soil and Fisheries Resource Report was prepared by the Forest Hydrologist, Forest Fisheries Biologist and North Zone Soil Scientist dated September 19, 2007. The Hydrologist did not find any significant effects on floodplains or wetlands.

3. *Municipal Watersheds* – While nearly all watersheds on the Forest provide for public water supplies, there are no designated municipal watersheds within the Forest boundary. Therefore, since this use does not occur in a designated municipal watershed, and the use will have no effect on a public water supply, there are no effects to these types of areas.

4. *Congressionally Designated Areas* - The project area is within a Congressionally designated area; the Rawah Wilderness as designated by Public Law 88-577. In the Colorado Wilderness Act, Public Law 96-560, December 22, 1980, under Section 102 (a) (17), the act states in part "...provided, that the Secretary shall permit motorized access and the use of motorized equipment used for the periodic maintenance and repair of the McGuire Water Transmission Line ditch..." (now known as the Nellie ditch). The applicant does not currently nor plans to use motorized access or equipment to access the ditch. As this water transmission ditch existed at the time of wilderness designation, there should be no effect to this type of area.

5. *Research Natural Areas and Inventoried Roadless Areas* – The project area lies within the Rawah Wilderness Geographic Area which does not have any Research Natural Areas or Inventoried Roadless Areas within it, therefore, there will be no effects on these types of areas.

6. *Native American Religious or Cultural Sites, or Areas* – The Nellie Ditch was reviewed by the Forest Archaeologist. There are no known American Indian religious or cultural sites, or archaeological sites in the project area. Therefore, there will be no effects on this circumstance from this project.

7. *Archaeological Sites or Historic Properties or Areas* – The Forest Archaeologist has made a determination that issuance of the Easement will not have the potential to adversely affect historic properties as defined by the National Historic Preservation Act. No consultation with the State Historic Preservation Office will be necessary. The U.S. Forest Service has no further obligations under Section 106 of the National Historic Preservation Act, provided that the project area or methods of implementation are not modified. Therefore, there are no effects on historic properties or archaeological sites in the project area.

### **III. OTHER RESOURCES CONSIDERED**

#### **A. Invasive species**

No invasive species were found within the Nellie Ditch right-of-way. The Easement will contain conditions concerning prevention and management of invasive weed species. These conditions govern use of certified weed-free seed, hay and mulch, treatment of invasive weeds, and cleaning of any equipment brought to the site to be sure it is free of noxious weeds.

#### **B. Soil Erosion**

The Nellie Ditch was examined for erosion problems. Although the ditch does cross some erosive soils which are prone to small mass failures, the majority of erosion could be prevented with effective implementation of mitigation measures. Two failures and one eroding headcut were found along the ditch. The Operation and Maintenance Plan will address the requirement to repair the failures and included mitigation measures to prevent further erosion.

### **IV. SCOPING**

Processing of Canyon Lakes Ranger District Ditch Bill Easements was listed in all quarters of the 2006 and 2007 Schedule of Proposed Actions for the Arapaho and Roosevelt National Forests and Pawnee National Grassland.

A scoping letter was sent out to potentially interested parties on January 30, 2006, requesting public input on the Nellie Ditch easement issuance. Two comment letters were received. The comments generally summarized the ditch bill eligibility requirements, and requested the Forest Service consider conditioning the easements to minimize damage to scenic and esthetic values and fish and wildlife and otherwise protect the environment. One of the respondents also requested the Forest Service require periodic review of the terms and conditions of the Easement and compliance with the National Environmental Policy Act. The comments are addressed as the Nellie Ditch meets the criteria for eligibility for an easement under the Ditch Bill Act,

and has been reviewed for potential environmental concerns. The Easement may be revised or modified if necessary to comply with the requirements of the Endangered Species Act, or if terms and conditions are no longer needed to comply with the requirements of applicable State or Federal law. Scenic values and aesthetics will be protected through the terms of the Easement and stipulations in the Operation and Maintenance Plan. Review of this application will comply with the National Environmental Policy Act.

## **V. FINDINGS REQUIRED BY AND/OR RELATED TO OTHER LAWS AND REGULATIONS**

My decision will comply with all applicable laws and regulations. I have summarized the pertinent ones below.

**Federal Land Policy Management Act of 1976 (FLPMA) as amended by Public Law 99-545, of October 27, 1986 (Colorado Ditch Bill):** The Colorado Ditch Bill directed the Secretary of Agriculture to issue permanent Easements to owners of certain qualifying water development facilities used to divert water for agricultural irrigation and/or livestock watering purposes on National Forest System (NFS) lands in 17 western states. These facilities include ditches, reservoirs, pipelines, canals, etc. The Nellie Ditch meets the eligibility requirements for an Easement under this authority.

The Nellie ditch does not have an operable headgate, however, the Forest Hydrologist concluded that installation of a headgate is not desirable for several reasons; 1) the water right associated with this ditch is for more water than would generally flow in McGuire Creek, so installation of a headgate would not limit the amount of water that was diverted; 2) because a constructed headgate would be more efficient at diverting flow than the existing rock and plastic diversion, it is likely that use of such a headgate would lead to more extensive dewatering of McGuire Creek; 3) because of the remote location in the Rawah Wilderness Area and the small size of the stream and the ditch, construction and maintenance of a headgate would be expected to cause resource damage that is unnecessary, given the existing condition of the facility.

**Forest Plan Consistency (National Forest Management Act) -** This Act requires the development of long-range land and resource management plans (Forest Plans). As required by this Act, the Arapaho and Roosevelt and Pawnee National Grassland (ARPNG) Forest Plan was approved in 1997. The Forest Plan provides guidance for all natural resource management activities on the Forest. The Act requires that all projects and activities be consistent with the Forest Plan. The project area lies within Management Area 1.1-Wilderness. This management area is characterized as stating that evidence of human activity, both past and present, is limited to that necessary to protect wilderness resources, features of historical significance or results from a prior existing right. Management area direction is to allow compatible special uses. The Nellie Ditch is specifically mentioned in the Colorado Wilderness Act for the Rawah Wilderness designation and therefore, is consistent with the ARPNG Forest Plan.

**Environmental Justice (Executive Order 12898)** – This Order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with the Order. Public involvement did not identify any adversely impacted local minority or low-income populations. This decision is not expected to adversely impact minority or low-income populations.

**National Environmental Policy Act** – This Act requires public involvement and consideration of potential environmental effects. The entirety of documentation for this decision supports compliance with this Act.

**Effects of Alternatives on Social Groups** – There will be no effects on minorities, Native Americans, women or the civil liberties of any other American citizen.

**Effects of Alternatives on Prime Rangeland, Forest Land and Farm Land** – The proposal presented is in compliance with Federal Regulations for prime range, forest and farm lands.

**Energy Requirements and Conservation Potential of Alternatives** – The energy required to implement the proposal in terms of petroleum products would be insignificant when viewed in light of the production costs and effect of the national world wide petroleum reserves. Very little petroleum-based energy will be expended in the operation and management of this water conveyance system.

**Air Quality** – This project will have no effect on air quality. There will be minor use of motorized equipment for maintenance of the ditch, and minimal dust created from operation and maintenance of the system.

**Wild and Scenic Rivers Act** – There are no designated Wild or Scenic Rivers in the project area, therefore this project will not affect any such rivers.

## **VI. ADMINISTRATIVE REVIEW OR APPEAL**

This decision is not subject to a higher level of administrative review or appeal pursuant to 36 CFR 215.4.

## **VII. IMPLEMENTATION DATE**

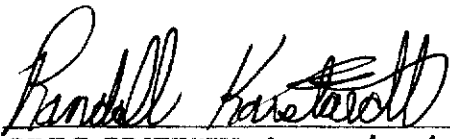
This decision may be implemented immediately. An Easement will be issued under the terms of the Colorado Ditch Bill Act, with terms and conditions necessary to protect the environment.

## **VIII. CONTACT PERSON**

Further information about this decision can be obtained from Susan Greenley, Lands and Minerals Staff at the Canyon Lakes Ranger District, 3150 Centre Avenue, Building E, Phone (970) 295-6735; FAX (970) 295-6795, or electronically at [sgreenley@fs.fed.us](mailto:sgreenley@fs.fed.us).

## IX. SIGNATURE AND DATE

I have concluded that this decision may be categorically excluded from documentation in an Environmental Impact Statement or Environmental Assessment as it is within one of the categories identified by the U.S. Department of Agriculture in 7 CFR part 1b.3 or one of the categories identified by the Chief of the Forest Service in Forest Service Handbook (FSH) 1909.15 sections 31.1b or 31.2, and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative environmental effect. My conclusion is based on information presented in this document and the entirety of the Planning Record.

  
For ~~GREG GRIFFITH~~ **ANTOINE L. DIXON**  
Deputy Regional Forester  
Rocky Mountain Region, R-2  
Forest Service, Department of Agriculture

July 18, 2008  
Date

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